REMARKS/ARGUMENTS

Claims 1-28 are pending in the present application. Claims 1, 5, 10, 12-15, 18-21, and 24-26 are amended; and claims 27 and 28 are added. Claims 1, 13, 15, 20-21, and 26 are amended to clarify when and why a rebate occurs. Claims 5 and 14 are amended to further clarify identifying the at least one discrepancy. Claims 10, 12, 18-19, and 24-25 are amended to further define the views and a relationship between a current service level and a promised service level. Support for the amendments to claims 1, 5, 13-15, 20-21, and 26 may be located at least on page 12, line 20 through page 13, line 18; page 15 lines 9-23; and Figures 7A and 7B. Support for amendments to claims 10, 12, 18-19, and 24-25 and new claims 27 and 28 may be located at least on page 16, lines 4-26; and Figures 6A and 6B. Reconsideration of the claims is respectfully requested.

I.   Telephone Interview

Applicants thank Examiner Michael Misiaszek and Examiner Matthew Gart for the courtesies extended to Applicants' representatives during the September 11, 2006 telephone interview. During the interview, Applicants' representatives discussed the distinctions between the present invention and the *Mikurak, Fraenkel,* and *Steele* references. No agreements were reached. The substance of the telephone interview is included in the following remarks.

II.   35 U.S.C. § 103, Alleged Obviousness Based on *Mikurak* and *Fraenkel*

The Office Action rejects claims 1, 2, 4-7, 9, 10-14, 15, 16, 18-20, 21, 22, and 24-26 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* (US 6,671,818 B1) in view of *Fraenkel et al.* (US 2003/0065986 A1), hereinafter referred to as *Fraenkel.* This rejection is respectfully traversed.

With respect to independent claims 1, 15, and 21, the Office Action states:

> Regarding Claims 1, 15, 21
> Mikurak discloses a method and system for a utility computing environment comprising:
> - setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer (at least column 44, lines 62-67 and column 45, lines 1-8: thresholds set with SLA)
> - identifying at least one discrepancy between the promised service level and the current service level (at least column 44, lines 62-67 and column 45, lines 1-8: performance goals tracked, notifications generated when not met)
> - providing a rebate to the customer for the at least one discrepancy (at least column 47, lines 9-19: rebates given for SLA breaches)
> Mikurak does not disclose:
> - displaying a view of a current service level for the customer
> - presenting a view of a promised service level based on service level agreement parameters

Fraenkel teaches that it is known to include presenting and displaying a view of service level (at least figure 14) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and system, as taught by Mikurak, with the presenting and displaying a service level, as taught by Fraenkel, since such a modification would have provided a means for monitoring resource performance and determine performance problems (at least paragraph [0011] of Fraenkel).

Office Action dated June 28, 2006, pages 2-3.

As amended, claim 1, which is representative of the other rejected independent claims 15 and 21 with regard to similarly recited subject matter, reads as follows:

1.   A method in a data processing system for a utility computing environment, the method comprising:
setting service level thresholds for the utility computing environment, wherein the service level thresholds are based on a service level agreement with a customer;
displaying a view of a current service level for the customer;
presenting a view of a promised service level based on service level agreement parameters;
identifying at least one discrepancy between the promised service level and the current service level; and
providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement.
(emphasis added)

With respect to independent claims 10, 18, and 24, the Office Action states:

Regarding Claims 10, 18, 24
Mikurak discloses:
   • presenting a promised service level based on a service level agreement (at least
   column 46, lines 1-9: customer reports generated of SLA parameters)
Mikurak does not disclose:
   • displaying at least one of an infrastructure view and an application view of a
   current service level for a customer, wherein the infrastructure view contains
   information technology hardware and software components, wherein the
   application view contains software applications residing on utility computing
   resources, and wherein the infrastructure view and the application view are
   linked
   • retrieving additional details of the at least one of the infrastructure view and the
   application view by clicking on a component of the at least one of the
   infrastructure view and the application view
   • switching between the infrastructure view and the application view
   Fraenkel teaches that it is known to include an infrastructure view containing
information technology hardware and software components (at least figure 29: server and memory performance and software performance displayed) and an application view containing software applications (at least figure 22: software (transaction performance displayed), linking the views (at least figures 22, 29: pages linked by menu on left side),

retrieving additional details with a mouse click (at least figures 22, 29: date menus at top can be clicked to retrieve additional details), and switching between views (at least figures 22, 29: views switched between via menu on left side) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the system and method, as taught by Mikurak, with the infrastructure view and application view, and their functionalities, as taught by Fraenkel, since such a modification would have provided means for monitoring resource performance and determine performance problems (at least paragraph [0011] of Fraenkel).

Office Action dated June 28, 2006, pages 6-7.

As amended, claim 10, which is representative of the other rejected independent claims 18 and 24 with regard to similarly recited subject matter, reads as follows:

> 10.   A method in a data processing system for a utility computing environment, the method comprising:
>   displaying at least one of an infrastructure view and an application view of a current service level for a customer, wherein the infrastructure view contains information technology hardware and software components, wherein the application view contains software applications residing on utility computing resources, and wherein the infrastructure view and the application view are linked;
>   presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer;
>   retrieving additional details of the at least one of the infrastructure view and the application view by clicking on a component of the at least one of the infrastructure view and the application view; and
>   switching between the infrastructure view and the application view.
> (emphasis added)

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on the prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). For an invention to be prima facie obvious, the prior art must teach or suggest all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Mikurak and *Fraenkel*, taken individually or in combination, do not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21. In addition, *Mikurak* and *Fraenkel*, taken individually or in combination, do not teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view

show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24.

Mikurak is directed to a system, method and article of manufacture for managing life cycle network assets in a network based supply chain. The supply chain network is monitored, and events from network assets are received, filtered, and correlated, whereby problems with network assets are further isolated. The filtered and isolated events are then translated into a standard object format for facilitating the determination of the life cycle of problem network assets, wherein the events are translated by a comprehensive library of all possible message types provided by the custom software interfaces. In accordance with an embodiment of *Mikurak's* invention, the network assets include both packet-switched and circuit-switched network assets, and the events are received by custom software interfaces, which communicate directly with the network assets. See *Mikurak*, Abstract. *Mikurak* does not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21. As stated in the Office Action, *Mikurak* does not teach or suggest "presenting a view of a promised service level based on service level agreement parameters." In addition, *Mikurak* does not teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24.

With respect to the rejection of claims 1, 10, 15, 18, 21, and 24, the Office Action refers to the following portions of *Mikurak*:

> The process provides sufficient and relevant information to verify compliance/non-compliance to Service Level Agreements (SLA). The process provides sufficient usage information for rating and billing.
> This process ensures that the Network Performance goals are tracked, and that notification is provided when they are not met (threshold exceeded, performance degradation). This also includes thresholds and specific requirements for billing. This includes information on capacity, utilization, traffic and usage collection. In some cases, changes in traffic conditions may trigger changes to the network for the purpose of traffic control. Reduced levels of network capacity can result in requests to Network Planning for more resources.

Mikurak, column 44, line 62, through column 45, line 8.

First, in step 1800, a hybrid network event is received which may include customer inquiries, required reports, completion notification, quality of service terms, service level agreement terms, service problem data, quality data, network performance data, and/or network configuration data. Next, in step 1802, the system determines customer reports to be generated and, in step 1804, generates the customer reports accordingly based on the event received.

Mikurak, column 46, lines 1-9.

The Problem Handling Process 1502 and the Network Data Management 1300 feed information to the Rating and Discounting Process 1306, as shown in FIG. 23. This process applies the correct rating rules to usage data on a customer-by-customer basis, as required. It also applies any discounts agreed to as part of the Ordering Process, for promotional discounts and charges, and for outages. In addition, the Rating and Discounting Process 1306 applies any rebates due because service level agreements were not met. The aim is to correctly rate usage and to correctly apply discounts, promotions and credits.

Mikurak, column 47, lines 9-19.

Mikurak discloses verifying compliance and non-compliance to a service level agreement and applying a rebate for not meeting a service level agreement. These portions of *Mikurak* do not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21. In addition, *Mikurak* does not teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24.

Fraenkel is directed to a system for monitoring and analyzing the post-deployment performance of a web-based or other transactional server. The monitoring system includes agent components that monitor and report various performance parameters associated with the transactional server, such as response times seen by end users, server and network times, and various server resource utilization parameters. A web-based reports server displays the data collected by the agents through a series of charts and graphs that indicate whether correlations exist between the response times and lower level parameters. A root cause analysis system applies statistical algorithms to the collected data to detect performance degradations in specific parameters, and uses predefined parameter dependency rules to correlate high level performance problems to likely sources or causes of such problems. See *Fraenkel*,

Abstract. *Fraenkel* does not teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24. In addition, *Fraenkel* does not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21.

With respect to the rejection of claims 1, 10, 15, 18, 21, and 24, the Office Action refers to Figure 14, Figure 22, Figure 29, and the following paragraph of *Fraenkel*:

> Another significant problem with prior tools and services is that they generally do not provide a mechanism for identifying the source of performance problem. For instance, a web site monitoring service may determine that users are currently experiencing unusually long response times, but typically will not be capable of determining the source of the problem. Thus, a system administrator may be required to review significant quantities of measurement data, and/or conduct additional testing, to pinpoint the source or cause of the detected problem.

Fraenkel, paragraph [0011].

This paragraph of *Fraenkel* only states that it is difficult to identify the source or cause of a detected problem and that generally prior tools do not provide a mechanism for identify the source of performance problems. *Fraenkel* does not mention service level agreements or presenting a view of a promised service level. Figures 14, 22, and 29 of *Fraenkel* only disclose displaying views of transaction performance. *Fraenkel* does not teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24. In addition, *Fraenkel* does not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21.

Mikurak and *Fraenkel* fail to teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21. In addition, *Mikurak* and *Fraenkel* fail to teach or suggest "presenting a view of a promised service level based on service level agreement parameters, wherein the infrastructure view and the application view show a relationship between the current service level and the promised service level, and wherein the relationship indicates a progress level of a service request with respect to a service level agreement with the customer," as recited in claims 10, 18, and 24. Therefore, the alleged combination of *Mikurak* and *Fraenkel* does not teach or suggest these features.

In view of the above, Applicants respectfully request withdrawal of the rejection of independent claims 1, 10, 15, 18, 21, and 24 under 35 U.S.C. §103(a). Additionally, *Mikurak* and *Fraenkel*, taken individually or in combination, do not teach or suggest the features of dependent claims 2, 4-7, 9, 11-14, 16, 19-20, 22, and 25-26 at least by virtue of their dependency on independent claims 1, 10, 15, 18, 21, and 24, respectively. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 2, 4-7, 9, 11-14, 16, 19-20, 22, and 25-26 under 35 U.S.C. §103(a).

In addition to being dependent on their respective independent claims, amended claims 12, 19, and 25 are also distinguished over the *Mikurak* and *Fraenkel* references based on the specific features recited therein. Claim 12 is dependent on independent claim 10; claim 19 is dependent on independent claim 18; and claim 25 is dependent on independent claim 24. *Mikurak* and *Fraenkel*, taken individually or in combination, do not teach or suggest that the relationship between a current service level and a promised service level shows a severity level of a discrepancy between the current service level and the promised service level. To the contrary, *Fraenkel* only shows that a current or historical service level may be rated as good, poor, or fair.

In addition to being dependent on their respective independent claims, claims 13, 20, and 26 are also distinguished over the *Mikurak* and *Fraenkel* references based on the specific features recited therein. Claim 13 is dependent on independent claim 10; claim 20 is dependent on independent claim 18; and claim 26 is dependent on independent claim 24. As discussed above, *Mikurak* and *Fraenkel*, taken individually or in combination, do not teach or suggest "providing a rebate to a customer when at least one discrepancy between the current service level and the promised service level occurs, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity

is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement."

III. 35 U.S.C. § 103, Alleged Obviousness Based on *Mikurak, Fraenkel,* and *Steele*

The Office Action rejects claims 3, 8, 17, and 23 under 35 U.S.C. §103(a) as being unpatentable over *Mikurak* in view of *Fraenkel,* and further in view of *Steele et al.* (US 2004/0174823 A1), hereinafter referred to as *Steele.* This rejection is respectfully traversed.

Since claims 3, 8, 17, and 23 depend from independent claims 1, 15, and 21, respectively, the same distinctions between *Mikurak, Fraenkel* and the invention recited in claims 1, 15, and 21 apply to dependent claims 3, 8, 17, and 23. In addition, *Steele* does not provide for the deficiencies of *Mikurak* and *Fraenkel* with regard to independent claims 1, 15, and 21. *Steele* is directed to a method and apparatus for designating and implementing support level agreements. *Steele* is cited for disclosing that a user enters support level agreement parameters in a window and that a support level agreement window can be customized. *Steele* does not teach or suggest "providing a rebate to the customer for the at least one discrepancy, wherein the rebate assures that the customer pays for service rendered, wherein the rebate is generated both for breeching the service level agreement and for guaranteed uniformity, and wherein guaranteed uniformity is the process of crediting the customer when successfully completing a service request using less time and resources than specified in the service level agreement," as recited in claims 1, 15, and 21. Thus, any alleged combination of *Mikurak* and *Fraenkel* with *Steele* still would not result in the invention recited in claims 1, 15, and 21 from which claims 3, 8, 17, and 23 depend. Accordingly, Applicant respectfully requests withdrawal of the rejection of claims 3, 8, 17, and 23 under 35 U.S.C. §103(a).

IV. New Claims 27 and 28

In addition, *Mikurak, Fraenkel,* and *Steele,* taken alone or in combination, do not teach or suggest "displaying a relationship between the current service level and the promised service level based on the service level agreement parameters, wherein the relationship indicates a severity level for the at least one discrepancy" as recited in claim 27. *Fraenkel* only shows that a current or historical service level may be rated as good, poor, or fair. This is not the same as indicating a severity level of a discrepancy between a current service level and a promised service level. A severity level may indicate that a warning, such as a threshold has been exceed prior to a breech of a service level agreement, or an actual breech of a service level agreement has occurred. Additionally, *Mikurak, Fraenkel,* and *Steele,* taken alone or in combination, do not teach or suggest that "a severity level indicator comprises a red light, a yellow light, and a green light on a traffic light," as recited in claim 28.

V.   **Conclusion**

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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